

Application No.: 10/058,252Docket No.: 30011908-3 US (1509-270)REMARKS

Applicants note the indication of claims 7 and 23 containing allowable subject matter.

Applicants traverse the rejection of claims 1-6, 10-22, 26, 27 and 30-36 under 35 USC 103 (a) as being unpatentable over Slezak, U.S. Patent 6,647,119, in view of McPherson et al., U.S. Patent Publication 2001/0046199. The Office Action states:

However, Slezak does not teach that the focus track is transmitted at a different data rate. McPherson teaches that unimportant audio, i.e. the non-focus component, can be transmitted using lower data resolutions and/or sampling rates (para. 0024, 0027, and 0028).

The foregoing statement in the Office Action ignores the requirement in each of independent claims 1, 15, 16, 32 and 33 for the data rate relating to each audio component to be under the control of the playing terminal. As such, the Office Action fails to attempt to establish a *prima facie* case of obviousness. An inspection of the relied upon portions of Slezak and McPherson et al. indicates neither of them discloses the playing terminal controlling the data rate relating to each audio component. The relied upon portions of Slezak merely indicate it is known to provide three-dimensional acoustic inputs to a user of a networked computer to spatially advise the user of the computer of different messages. The primary use of the Slezak arrangement is to provide computer games with simulated sound sources; see, for example, column 1, lines 32-43, and the paragraph bridging columns 1 and 2. The relied upon portions of McPherson et al. merely indicate different audio channels at different spatial positions can be encoded at different frequencies or with words having different bit lengths, depending upon the importance of the particular channel. The relied upon portions of both references fail to disclose control by the *playing terminal* of the data rate relating to each audio component.

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Each of the independent claims further requires the playing terminal to control the data rate of transmitted data sent from the audio source to the playing terminal. Claim 1 indicates the playing terminal is arranged to control the data rate of transmitted data, relating to each audio component, sent from the audio source to the playing terminal, wherein the data rate of the transmitted data depends on the selected sound or track. Claim 15 indicates the playing terminal is arranged to control the data rate of transmitted data relating to each audio component, as sent from the or each audio source to the playing terminal, wherein the data rate of transmitted data is dependent on the selected focus sound or track. Claim 16 requires a processing arrangement of a playing terminal to send a control signal to an audio source, wherein the control signal indicates the data rate (relating to each audio component received by the playing terminal from a remote audio source) to be transmitted from the audio source to the playing terminal, wherein the data rate of the data depends on the audio component selected as the focus component. Claim 18 requires a control signal to be transmitted to a remote audio source to control the data rate of transmitted data in response to the audible sound or track that is selected as a focus sound or track. Claim 32 requires a control signal to be transmitted to a remote audio source to control the data rate of transmitted data relating to each audio component, wherein the data rate of the transmitted data depends on the focus sound or source. Claim 33 requires an audio playing means to control the data rate of transmitted data relating to each audio component sent from an audio source means to an audio playing means, wherein the data rate of transmitted data depends on the selected focus sound or track. The foregoing limitations are not found in either Slezak or McPherson et al...

The combination of Slezak and McPherson et al. is a result of improper use of hindsight by the examiner. The examiner has cast about to find references he believes disclose bits and pieces of applicants' claims. There is no reason why one of ordinary skill in the art would have modified the

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Slezak computer terminal including a graphical interface to include the McPherson et al. DVD recording medium having multiple channels with different resolutions. The Office Action states it would have been obvious to have combined Slezak and McPherson et al. to save bandwidth. However, since McPherson et al. is concerned with a DVD, not transmission between an audio source and a playing device, applicants are unable to understand why one of ordinary skill in the art who is considering the Slezak reference would have turned to McPherson et al. for this purpose.

Consequently, each of independent claims 1, 15, 16, 18, 32 and 33 is not rendered obvious by the combination of Slezak and McPherson et al.... Correspondingly, claims 2-6, 10-14, 17, 19-22, 26, 27, 30, 31 and 34-36, all of which depend either directly or indirectly on the foregoing independent claims, are allowable. In addition, some of the dependent claims include features that are not mentioned in the Office Action. For example, claims 6 and 22 require the audio source to transmit, for each non-focus component, a non-continuous data burst of audio data relating to a sound or track, or a fraction of a sound or track. Because the Office Action fails to mention the non-continuous data burst feature, there is no attempt to establish a *prima facie* case of obviousness with respect to claim 6 or 22.

Applicants traverse the rejection of dependent claims 8, 9, 24 and 25 under 35 U.S.C. §103(a) as being unpatentable over the combination of Slezak and McPherson et al., as applied to claim 1, and further in view of the paper authored by Kobayashi et al., entitled "Dynamic Soundscape: mapping time to space for Audio Browsing." The Kobayashi et al. reference obviously fails to cure the deficiencies of the rejection of claim 1, upon which claims 8 and 9 depend, or the deficiencies of the rejection of claim 18, upon which claims 24 and 25 depend. Consequently, the rejection of claims 8, 9, 24 and 25 is improper.

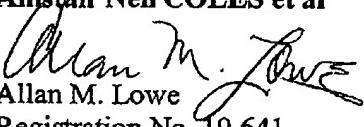
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In view of the foregoing remarks, favorable reconsideration and allowance are respectfully requested and deemed in order.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 08-2025, and please credit any excess fees to such deposit account.

Respectfully submitted,

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